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## BY HAND DELIVERY

Jeff S. Jordan  
Federal Election Commission  
General Counsel's Office  
999 E Street NW  
Washington, DC 20463

Re: MUR 6940

Dear Mr. Jordan:

We submit this letter as counsel on behalf of Hillary for America ("HFA"), the authorized committee of Hillary Rodham Clinton, and Jose H. Villarreal, in his official capacity as Treasurer, (collectively, "Respondents") in response to the Complaint filed with the Federal Election Commission (the "FEC" or "Commission") by Foundation for Accountability and Civic Trust, dated May 18, 2015 (the "Complaint"). The Complaint alleges that Respondents have accepted, or are planning to accept, illegal in-kind contributions from a political committee named Correct the Record ("CTR"). However, the Complaint is entirely speculative; does not allege any actual contribution that Respondents have received; and relies on an incorrect application of FEC regulations. Accordingly, the Commission should dismiss this meritless complaint and close the file.

### Legal Analysis

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would constitute a violation of the law. See 11 C.F.R. § 111.4, "Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." Matter Under Review 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas (Dec. 21, 2000). Moreover, "[a] mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents." Matter Under Review 4850, Statement of Reasons of Commissioners Wold, Mason, and Thomas (July 20, 2000).

The Complaint fails this test and should be dismissed. The Complaint alleges that "CTR PAC has made, or is planning to make, illegal in-kind contributions to the Clinton Campaign," but fails to identify any actual communications or other expenditures that have occurred which constitute "contributions." In fact, CTR did not even exist as a political committee at the time the complaint was filed. While "there may be some argument that the Commission may consider a complaint alleging a violation of [the Act] has not, but is about to occur," it will not "rely on a

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complaint, such as [the instant Complaint], with nothing more than speculation and hearsay as the basis to investigate an allegedly contemplated violation." Matter Under Review 5562, Statement of Reasons of Commissioners David M. Mason and Bradley A. Smith at n 15 (July 12, 2005). Here, the Complainant relies solely on newspaper articles describing CTR's *plans* to allege that an impermissible contribution has *occurred*. That is an insufficient factual record on which the Commission can find reason to believe and proceed with an investigation.

Moreover, the planned CTR activity described by the newspapers is *not* a "contribution" under the Commission's regulations. The Complaint alleges that CTR would provide HFA with research for free or below market value and that this would constitute a "contribution." That is simply incorrect. Since its inception, HFA has paid CTR \$275,615.43 – the fair market of the research provided by CTR. The Complaint also limply puts forth the fiction that CTR's payments for staff and equipment to facilitate distribution of pro-Clinton communications over the Internet represent "something of value to the Clinton Campaign, and as such, constitutes an illegal in-kind contribution." But this view is belied by the plain language of the regulations. Under section 109.21, CTR's proposed communications cannot be "coordinated communications," because they are neither "public communications" nor "electioneering communications." A "public communication" is "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26. In turn, the definition of the term "general public political advertising" expressly excludes "communications over the Internet, except for communications placed for a fee on another person's Web site." *Id.* That is precisely the universe of communications at issue here.

The Commission has "narrowly interpreted the term Internet communication 'placed for a fee,' and *has not construed that phrase to cover payments for services necessary to make an Internet communication.*" See Matter Under Review 6657, First General Counsel's Report at 6 (May 16, 2013) (emphasis added). Accordingly, just as the communications are exempt from the definition of "contribution," so too are the payments to staff to create and distribute these communications.

Consistent with the regulations, the Commission has dismissed complaints alleging that Internet communications that did not meet the definition of "public communications" were impermissible contributions.<sup>1</sup> For example, the FEC has concluded that a corporate website that included express advocacy for its owner's campaign was not a contribution because the communication

<sup>1</sup> FEC Matter Under Review 6477 (Right Turn USA), First General Counsel's Report (Dec. 27, 2011); FEC Matter Under Review 6522 (Lisa Wilson-Foley for Congress), First General Counsel's Report (Feb. 5, 2013); FEC Matter Under Review 6657 (Akin for Senate), First General Counsel's Report (Sept. 17, 2013); FEC Matter Under Review 6722 (House Majority PAC), First General Counsel's Report (Aug. 6, 2013).


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was not a public communication, and thus not a coordinated communication. Matter Under Review 6522, First General Counsel's Report (Feb 5, 2013). In another matter, the Commission concluded that a super PAC's web-based video featuring congressional candidates speaking directly to the camera was not a coordinated communication "because the video is neither an electioneering communication nor a public communication, [and] therefore fails the content prong of the Commission's coordinated communications test . . . ." Matter Under Review 6722, First General Counsel's Report (Aug. 6, 2013). Stated plainly, the Commission has consistently found that communications other than "public communications" sponsored by a third party are not in-kind contributions. That precludes Complainant's argument that CTR's communications – which would not be placed for a fee on another person's website – are an impermissible contribution.<sup>2</sup>

### Conclusion

As described above, the Complaint fails to allege specific facts that would constitute a violation of the Act or Commission regulations as implemented by the FEC. We therefore respectfully request that the Commission dismiss this matter and take no further action.

Very truly yours,



Marc E. Elias  
Jonathan S. Berkon  
Tyler J. Hagenbuch  
Counsel to Respondents

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<sup>2</sup> The Complaint cites two supposed sources of authority for its theory, both of which are inapposite. Matter Under Review 5366 did not involve communications at all; it instead addressed Part 114 of the regulations, which bars corporate staff from providing in-kind services for free to campaigns. Likewise, the recent case of *U.S. v. Harber*, E.D.V.A. 1:14-cr-00373 (Nov. 6, 2014) involved the coordination of "public communications" that met the Commission's "content prong." As discussed above, CTR has said that it will not sponsor such communications.